

1 **BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**

2 **IN THE MATTER INVOLVING** }

3 **STEPHAN MUSSEHL, D.O.,** }
4 **License No. 1003** }

5 **RESPONDENT.** }

Case No.: MA1003004

Filed: **NV STATE BOARD OF
OSTEOPATHIC MEDICINE**

MAY 05 2010

6 **SETTLEMENT AGREEMENT AND ORDER**

FILED

7 **I. PARTIES**

8 This Settlement Agreement and Order ("Agreement and Order") is made by and
9
10 between Daniel K. Curtis, D.O., Investigative Board Member ("Dr. Curtis" or "Investigative
11 Board Member") for the Nevada State Board of Osteopathic Medicine ("the Board") through
12 the Board's Counsel/Executive Director, Dianna Hegeduis, Esq., and Stephan Mussehl, D.O.
13 ("Dr. Mussehl") (collectively referred to as "the Parties").

14 **II. RECITALS**

15 As a preamble to this Agreement, the Parties agree to the following:

- 16 A. WHEREAS, the Board, through the Investigative Board Member, ascertained certain
- 17 information regarding litigation filed against Dr. Mussehl. The information was
- 18 ascertained as a result of the Board's staff due diligence in investigating its
- 19 applicants/licensees.
- 20 B. WHEREAS, the Investigative Board Member ("IBM") has alleged as follows:
- 21 (1) Re: patient "NS." Suit was filed and served on Respondent in July 2003 and the
- 22 case was settled in August 2005; both events were not timely reported to the Board
- 23 pursuant to statute. Additionally, in response to the question about whether there had
- 24 been a claim or lawsuit for malpractice within the prior year, Respondent responded
- 25 "no" on his 2004 renewal application submitted to the Board in December 2003.
- 26 Because of the "NS" lawsuit, the response should have been "yes." (2) Re: patient
- 27 "DG." Suit was commenced in April 2005 and the matter went to trial in January 2010.
- 28 Although the physician reported the outcome of the trial in a timely fashion, he did not
- timely report the commencement of this lawsuit as required by statute. The physician
- did, however, properly respond to the question about lawsuits in his 2006 renewal
- application, submitted in 2005. The IBM has alleged all such failures are violations of
- NRS chapter 633 as discussed hereinafter.
- C. NRS 633.527(1) states that a licensed "osteopathic physician **shall report** to the
- Board: (a) any action for malpractice against the osteopathic physician not later than 45
- days after the osteopathic physician receives service of a summons and complaint for
- the action; (b) any claim for malpractice against the osteopathic physician that is
- submitted to arbitration or mediation not later than 45 days after the claim is submitted

1 to arbitration or mediation; (c) any settlement, award, judgment or other disposition or
2 any action or claim described in paragraphs (a) or (b) not later than 45 days after the
3 settlement, award, judgment or other disposition; and (d) any sanctions imposed
4 against the osteopathic physician that are reportable to the National Practitioner Data
5 Bank not later than 45 days after the sanctions are imposed. NRS 633.527(2) states
6 that should the Board find "that an osteopathic physician has violated any provision of
7 this section, **the Board may impose a fine of not more than \$5,000** against the
8 osteopathic physician **for each violation, in addition to any other fines or penalties**
9 **permitted by law.**" (Emphasis added.) This statute was added to the law in 2003. By
10 the use of the word "shall" by the Nevada State Legislature in this statute, the
11 Legislature intended to mandatorily require all osteopathic physicians to report any of
12 the four (4) events mentioned in the statute.

- 13 D. NRS 633.131(1) defines "unprofessional conduct" as including "willfully making a false
14 . . . statement . . . in applying for a license to practice osteopathic medicine or in
15 applying for renewal of a license to practice osteopathic medicine." Pursuant to NRS
16 633.511(1), "unprofessional conduct" is a ground for initiating a formal disciplinary
17 proceeding; and such discipline may include public reprimands, the suspension or
18 revocation of the license to practice osteopathic medicine in the State of Nevada, and
19 an assessment of a fine not to exceed \$5,000 per violation.
- 20 E. NRS 622.400(1) states that a "regulatory body [such as this Board] may recover from a
21 person reasonable attorney's fees and costs that are incurred by the regulatory body as
22 part of its investigative, administrative and disciplinary proceedings against the person
23 if the regulatory body" either enters a final order or enters into a settlement agreement.
- 24 F. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
25 Board to file a formal disciplinary complaint.
- 26 G. WHEREAS, the parties understand that this Agreement will be signed by the respective
27 parties and will then be offered to the Board for the entire Board's approval at the next
28 Board meeting, with the recommendation of the Investigating Board Member that this
matter be settled. The Agreement shall not become effective until it has been
approved by a majority of the Board and endorsed by a representative member of the
Board.
- H. WHEREAS, Dr. Mussehl understands that the Board is free to accept or reject this
Agreement and, if rejected by the Board, a formal disciplinary complaint may be filed
and a hearing scheduled on the same. The Board members who review this matter for
approval of this Agreement may be the same members who ultimately hear the
disciplinary complaint if this Agreement is not approved by the Board. Dr. Mussehl
hereby agrees to waive any rights he might have to challenge the impartiality of the
Board to hear the disciplinary complaint, based on prior knowledge obtained by the
Board through consideration of this Agreement, if after review by the Board, this
Agreement is rejected. Furthermore, if the Board does not accept the Agreement, it
shall be regarded as null and void.
- I. WHEREAS, Dr. Mussehl acknowledges that the Board will retain jurisdiction over this
matter until all terms and conditions set forth in this Agreement and Order have been
met to the satisfaction of the Board.
- J. WHEREAS, Dr. Mussehl acknowledges that the Board had a reasonable basis to
believe that the statutes and/or regulations regulating the practice of Osteopathic
Medicine in the State of Nevada may have been violated.
- K. WHEREAS, in order to resolve the matter prior to it becoming a disciplinary proceeding
and to save further costs and expenses, Dr. Mussehl has elected to enter into this
Agreement to resolve this matter, and this matter only.

- 1 L. WHEREAS, Dr. Mussehl acknowledges that once accepted by the Board, this
2 Agreement and all associated documentation become a matter of public record (with
3 the exception of medical information related to the patient).
- 4 M. WHEREAS, Dr. Mussehl has had the opportunity to obtain the advice from competent
5 counsel of his choice concerning the terms and conditions of this Agreement and the
6 execution thereof. No coercion has been exerted upon Dr. Mussehl, nor have any
7 promises been made other than those reflected in this Agreement. Dr. Mussehl freely
8 and voluntarily entered into this agreement, motivated only by a desire to resolve the
9 issues addressed herein. Dr. Mussehl has executed this Agreement only after a careful
10 reading of it and a full understanding of all its terms.
- 11 N. WHEREAS, Dr. Mussehl is fully aware of his rights to contest the charges pending
12 against him. These rights include: representation by an attorney at his own expense,
13 the right to a public hearing on any charges or allegations filed, the right to confront and
14 cross-examine witnesses called to testify against him, the right to present evidence on
15 his own behalf, the right to compulsory process to secure the attendance of such
16 witnesses, the right to testify on his own behalf, the right to receive written findings of
17 fact and conclusions of law supporting the decision on the merits of the complaint and
18 the right to obtain judicial review of the Board's decision. Should the Board accept this
19 Agreement, Dr. Mussehl voluntarily waives these rights.
- 20 O. WHEREAS, this Agreement and Order shall be construed in accordance with the laws
21 of the State of Nevada.
- 22 P. WHEREAS, this Agreement and Order contains a complete description of the
23 agreement between the parties and it supersedes any previous agreements between
24 the parties. All material representations, understandings and promises of the parties
25 are contained in this Agreement. Any modifications must be set forth in writing, signed
26 by all the parties, and approved by the Board.

27 III. TERMS OF THE AGREEMENT

- 28 A. Dr. Mussehl acknowledges that the failure to report allegations are true, and each
such act (failure to timely report and/or inaccurate information in renewal
applications) is a violation of NRS chapter 633 for which discipline is permissible
under Nevada law. In exchange for the Board not pursuing an administrative action
on either the non-reporting allegations or the inaccurate information allegations, and
Dr. Mussehl not pursuing subsequent reviews by the appropriate appellate Courts,
the parties have agreed to resolve the current matter, and only this matter. Dr.
Mussehl will henceforth insure that all lawsuits involving him will be timely and
accurately reported to the Board, and the failure to do so may result in the Board
bringing a disciplinary action against the osteopathic medical license issued by the
Board to Dr. Mussehl. If any lawsuit is not reported to the Board, such will be in
violation of this agreement as well as the applicable statutes. **ADDITIONALLY,
THE BOARD ACKNOWLEDGES, AND THE PARTIES DO HEREBY AGREE,
THAT A DISCIPLINARY ACTION WILL NOT AND HAS NOT BEEN FILED BY
THE BOARD; AND THAT THE PARTIES HAVE SIMPLY AGREED TO AN
ADMINISTRATIVE FINE BEING ASSESSED SOLELY FOR THE NON-
REPORTING VIOLATION, I.E., NOT FOR ANY ALLEGATIONS REGARDING
UNPROFESSIONAL CONDUCT AND/OR REGARDING THE PHYSICIAN'S
COMPETENCY.**
- B. Dr. Mussehl agrees to pay the sum of one thousand dollars (\$1,000.00) as the fine
imposed for having violated NRS 633.527(1) for the failure to timely report the

1 events pertaining to the lawsuits. This sum **includes** all fees and costs incurred by
2 the Board up to and including the approval of this settlement agreement by the
3 Board at its next scheduled board meeting pursuant to NAC 633.470(2)(b)(6). Such
4 amount shall be payable at the time of the execution of this document.

- 5 C. Should Dr. Mussehl fail to satisfy and pay the indebtedness of \$1,000.00 in a timely
6 manner as discussed herein, Dr. Mussehl understands and agrees that he will be
7 considered in default of this Agreement, and this agreement will be null and void,
8 with the Respondent receiving credit for payments made to date. The Board may
9 take whatever action it deems appropriate, including but not limited to reducing the
10 balance to judgment pursuant to NRS chapter 353C.
- 11 D. The Respondent, Dr. Mussehl, agrees to bear his own fees and costs, including the
12 fees and expenses of his own attorney(s) if applicable.
- 13 E. This Agreement and Order shall inure to the benefit of and be binding upon each of
14 the parties hereto and their respective heirs, personal representatives, assigns and
15 successors in interest of each party.
- 16 F. This Agreement and Order shall be construed in accordance with the laws of the
17 State of Nevada.
- 18 G. This settlement agreement consists of six (6) pages and embodies the entire
19 agreement between the Board and the osteopathic physician. It may not be altered,
20 amended or modified without the express consent of the parties, and any
21 subsequent alteration, amendment, or modification shall be in writing and subject to
22 approval by the Board.
- 23 H. In consideration for the execution of this Agreement, Dr. Mussehl hereby releases
24 and forever discharges the State of Nevada, the Board of Osteopathic Medicine,
25 and the Nevada State Attorney General's Office (as counsel for the Board), and
26 each of their representatives, investigators, and employees, in their individual and
27 representative capacity (collectively the State of Nevada Agencies) from any and all
28 manner of actions, causes of actions, suits, debts, judgments, executions, claims,
and demands whatsoever known or unknown, in law and in equity, that he may
have had, now has, may have had, or claim to have against any and all of the
persons and entities named in this paragraph arising out of, or by reason of, the
investigation of the allegations raised in this matter, and other matters relating
thereto.
- I. Dr. Mussehl, for himself, his heirs, executors, administrators, successors and
assigns, hereby indemnifies and holds harmless the State of Nevada, the Nevada
State Board of Osteopathic Medicine, the Nevada Attorney General's office and
each of their members, agents and employees in their individual and representative
capacities against any and all claims, suits, demands, actions, debts, damages,
costs, charges, and expenses, including court costs and attorney's fees against any
persons or entities as well as all liability, losses, and damages of any nature
whatsoever that the persons and entities named in this paragraph shall have or may
at any time sustain or suffer by reason of this investigation, this settlement or its
administration.
- J. This document may be prepared in multiple counterparts. Each counterpart,
whether it be originally typed, a carbon, photocopy, facsimile or other type of copy,
shall be deemed an original hereof if executed by each of the Parties hereto.

1 K. LASTLY, by executing this agreement, Physician hereby expressly, knowingly, and
2 intentionally waive the 21-working days notice requirement pursuant to Nevada's
3 Open Meeting Laws and acknowledges that this Agreement shall be on the agenda
4 for the Board's approval in the month of May, 2010.

5 STEPHAN MUSSEHL, D.O.

6 By: [Signature]
7 Osteopathic Physician

8 Dated: 4-20-2010

9 NEVADA STATE BOARD OF
10 OSTEOPATHIC MEDICINE

11 BY: [Signature]
12 Daniel K. Curtis, D.O.
13 Investigating Board Member

14 Dated: 4/23/10

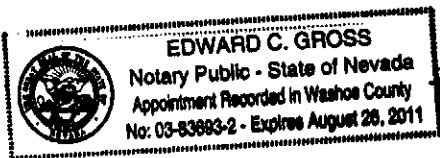
15 NEVADA STATE BOARD OF
16 OSTEOPATHIC MEDICINE

17 By: [Signature]
18 Dianna Hegeduis, Executive Director -
19 Board Counsel

20 Dated: 5-4-10

21 **ACKNOWLEDGEMENT**

22 On this the 20 day of April, 2010, the said STEPHAN MUSSEHL, D.O., personally
23 appeared before me, a notary public, and signed the above document, freely and voluntarily,
24 under no duress.



[Signature]
Notary Public

ORDER OF THE BOARD

IT IS SO ORDERED.

IT IS FURTHER ORDERED that should Dr. Mussehl fail to comply with any terms or
conditions of this Agreement, Dr. Mussehl will be in breach of this Agreement; and this
Agreement will be null and void. The Board may take whatever action it deems appropriate,
including but not limited to proceeding with the administrative action against Dr. Mussehl.
Should this Agreement become null and void by Dr. Mussehl's failure to comply with terms or

1 conditions of this Agreement, the Board may not only pursue an administrative action against
2 Dr. Mussehl, but the Board may also seek the maximum fees, fines, and costs.

3 DATED this 4th day of May, 2010.

4 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

5
6 BY: 
7 For Dr. C. Dean Milne, Vice-President of the
8 Board

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